IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1611 of 2004 (S/S)

Puran Chandra Joshi
S/o Sri Jagdish Chandra Joshi
Daily wager, Administrative Training Institute
Nainital. ……..Petitioner

Versus

1. State of Uttaranchal through
Secretary Home Affairs
Uttaranchal.
2. Director of Administrative Training Institute
Nainital. ……Respondents

Shri Amish Tiwari, Advocate for the petitioner.
Shri Sudhanshu Dhulia, Sr. Advocate with Shri R.S. Bisht, Advocate for the respondents.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2. By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has sought mandamus, commanding the respondents not to interfere in the peaceful functioning of the petitioner as a Public Call Office (herein after referred as P.C.O) Operator in the academic premises of the respondents. Further a mandamus has been sought for regularization of the services of the petitioner against Class IV post.

3. Brief facts of the case, as narrated in the writ petition are that the petitioner was engaged as daily wage worker in the P.C.O. in the Administrative

Training Institute at Nainital in the month of June, 1996. He was working as Operator in the P.C.O. His work was to record the bills of the calls, to facilitate the officers/guests, using the telephone provided in the P.C.O. It is alleged that the petitioner continued to work in said capacity till November, 2004 and his wages were meanwhile enhanced from Rs. 1,000/- to Rs. 1,500/-, and thereafter from Rs. 1,500/- to Rs. 1,750/-. Claiming that the petitioner was discharging his functions efficiently, the regularization in the service has been sought by the petitioner.

4. A counter affidavit has been filed on behalf of the respondents in which it has been stated that the correct name of the institute is Uttaranchal Academy of Administration in which the petitioner was engaged on daily wages. However, it is stated in the counter affidavit that now there is no need to run the P.C.O. in the Academy and the petitioner has no right to continue with the job assigned to him on daily wages. It is further stated that there is no post of P.C.O. Operator in the Academy nor is the petitioner entitled to regularization in the service.

5. In ***Secretary, State of Karnataka and others Vs. Uma Devi and others (2006) 4 S.C.C. Pg. 1,*** the Apex Court has observed in para 47 and 49 as under:-

"***47.*** *When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only be following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.*

48. *……..*

49. *It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the*

pendency of proceedings in tribunals and courts initiated at the instance of employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India, It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of writ, the court has necessarily to ask itself whether the person before it had nay legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

6. In view of the above observations of the Apex Court, the petitioner has no right to get regularized after working on daily wages, without being appointed under the through selection process.

In the circumstances, this writ petition is liable to be dismissed. The same is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 27.07.2006
Sweta